

Hawaii Public Housing Authority
State of Hawaii

IFB-PMB-2009-20

Invitation-For-Bids (IFB) for Furnishing Tree Trimming Services
at various Federally Funded Asset Management Projects
located on Oahu

NOTE: If this solicitation document was downloaded through the internet, each interested Bidder must complete the sign-in sheet and provide the necessary contact information to the listed IFB Coordinator at HPHA. Registration is essential to receive any addendums or other information for this solicitation. The HPHA shall not be responsible for any missing addenda, clarifications, attachments or other information regarding this solicitation if an offer is submitted from an incomplete solicitation document.

Issued May 28, 2009



Notice to Bidders
(Chapter 103D, HRS)

INVITATION FOR BIDS (IFB) No. PMB-2009-20
Tree Trimming

Notice is hereby given that pursuant to Chapter §103D, Hawaii Revised Statutes, the Hawaii Public Housing Authority (HPHA), will be accepting sealed bids for furnishing tree trimming services at the following federal Asset Management Projects located on Oahu:

Mayor Wright Homes	521 North Kukui Street Honolulu, Hawaii 96817
Kaahumanu Homes	Alokele and Kaiwiula Street Honolulu, Hawaii 96817
Kamehameha Homes	1541 Haka Drive Honolulu, Hawaii 96817
Waimaha Sunflower	85-186 McArthur Street Waianae, Hawaii 96792

The Invitation for Bids, Specifications and Bid may be picked up beginning May 28, 2009 at 1002 North School Street, Building D (Purchasing), Honolulu, Hawaii 96817 or downloaded at the HPHA website at: www.hpha.hawaii.gov. Interested bidders are encouraged to attend an optional Pre-Bid Conference. A site-inspection will commence after the pre-bid conference. The pre-bid conference will be held on Tuesday, June 4, 2009 at 1002 North School Street, Building E (Board Room) at 10:00 a.m.

Sealed bids will be received at 1002 North School Street, Building D (Procurement Office) until 10:00 a.m Friday, June 12, 2009. Opening of bids will commence at 10:15 a.m. Hawaii Standard Time on June 12, 2009.

The Hawaii Public Housing Authority reserves the right to reject any or all bids and to accept the bids in whole or part in the best interest of the State. If you have any questions, please contact Michelle Kim, Contract Specialist at 832-1892.

HAWAII PUBLIC HOUSING AUTHORITY
Chad K. Taniguchi
Executive Director



IFB Table of Contents

Section 1 Administrative Overview

I.	Authority	1
II.	IFB Organization	1
III.	Contracting Office	1
IV.	Procurement Timeline.....	2
V.	Pre-Bid Conference/Site Inspection.....	2
VI.	Submission of Questions.....	2
VII.	Submission of Sealed Bids.....	3
VIII.	Discussions with Bidders Prior to Submission	4
IX.	Opening of Bids	4
X.	Additional Materials and Documentation	4
XI.	IFB Amendments	4
XII.	Cancellation of Invitation for Bids	4
XIII.	Costs for Bid Preparation & Verification	5
XIV.	Mistakes in Bids.....	5
XV.	Rejection of Bids.....	5
XVI.	Notice of Award.....	5
XVII.	Protests	6
XVIII.	Availability of Funds	7
XIX.	Monitoring and Evaluation	7
XX.	General and Special Conditions of the Contract.....	7
XXI.	Cost Principles	7

Section 2 – Scope of Work and Specifications

I.	Introduction	
A.	Purpose or Need.....	9
B.	Area of the Service.....	9
C.	Funding Source and Period of Availability	9
II.	General Requirements	
A.	Bid Preparation	10
B.	Type of Contract	14
C.	Single or Multiple Contracts to be Awarded	14
D.	Single or Multi-Term Contracts to be Awarded	14
E.	Bid Price.....	15
F.	Statutory requirements of Section 103-55, HRS	15
G.	Price Adjustments	16
III.	Contract Monitoring & Remedies	
A.	Monitoring	17
B.	Damages.....	17
C.	Termination.....	18

IV.	Scope of Work & Specifications	
A.	Management Requirements & Qualifications.....	18
B.	Tree Trimming Terminology	21
C.	Minimum/Mandatory Requirements.....	22

Section 3 – Bid Forms and Instructions

I.	Bid Forms.....	27
II.	HUD Forms.....	29
III.	General Conditions	29

Section 4 – Bid Evaluation and Award

I.	Bid Evaluation	31
II.	Method of Award.....	31

Attachments

1.	Wage Certificate	Due June 12, 2009
2.	Bid Forms	Due June 12, 2009
3.	Area of Service	For Bidder's information/use
4.	Group 1-16 Specifications	For Bidder's information/use
5.	Sample Contract Based on Competitive Sealed Bids for Goods and Services AG-003 Rev 11/15/2005	For Bidder's information/use
6.	General Conditions, State AG-008 Rev 4/15/2009	For Bidder's information/use
7.	General Conditions, Federal form HUD 5370-C	For Bidder's information/use
8.	Instructions to Offerors, form HUD 5369-B	For Bidder's information/use
9.	Certification and Representations of Offerors, form HUD 5369-C	Due June 12, 2009
10.	Salary Schedule, BU 01	For Bidder's information/use
11.	Maps	For Bidder's information/use

Section 1

Administrative Overview

Section 1

Administrative Overview

I. Authority

This Invitation For Bid (IFB) is issued under Chapter 103D, HRS, the related administrative rules, and the U.S. Department of Housing and Urban Developments regulations. Prospective bidders are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed bid by any prospective bidder shall constitute admission of such knowledge on the part of such prospective bidder.

II. IFB Organization

This IFB is organized into four sections:

- Section 1 Administrative Overview – Provides bidders with an overview of the procurement process.
- Section 2 Scope of Work and Specifications – Provides bidders with a general description of the tasks to be performed, delineates bidders' responsibilities, and defines deliverables (as applicable)
- Section 3 Bid Form and Instructions – Describes the required format and content for the bid
- Section 4 Bid Evaluation & Award– Describes how the bids will be evaluated by the state contracting office

III. Contracting Office

The contracting office is responsible for overseeing the contract(s) resulting from this IFB. The contracting office is:

Hawaii Public Housing Authority
Property Management and Maintenance Service Branch
1002 North School Street
Honolulu, Hawaii 96817

For the purpose of this solicitation, the IFB Coordinator or his/her designated representative is listed below as the IFB Coordinator:

Michelle Kim, Contract Specialist
Hawaii Public Housing Authority
1002 North School Street Bldg D
Honolulu, Hawaii 96817
Telephone: (808) 832-1892 Fax: (808) 832-6039

The HPHA reserves the right to change the IFB Coordinator.

For the purpose of this Contract, the Officer-in-Charge (OIC) is:

Ms. Joanna Chavez, Manager
521 North Kukui Street
Honolulu, Hawaii 96817
Phone: (808) 832-3153

Mr. Tom Bentkowski or
Ms. Veronica Malabey
85-186 McArthur Street
Waianae, Hawaii 96792
Phone: (808) 697-7171

IV. Procurement Timeline

<u>Activity</u>	<u>Scheduled Dates</u>
Public notice announcing IFB	May 28, 2009
Distribution of bid specs/bid form	May 28, 2009
Orientation	June 4, 2009
Site visit period	June 4-8, 2009
Bid submittal deadlines	June 12, 2009
Bid Opening	June 12, 2009
Notice of award	June 2009
Contract execution and start date	June 2009

The State reserves the right to amend or revise the timetable without prior written notice when it is in the best interests of the State at the State's sole discretion. Contract execution and start date are subject to HUD approval.

V. Pre-bid Conference & Site Inspection

Interested bidders are encouraged to attend an optional Pre-Bid Conference. A site-inspection will commence after the pre-bid conference. The Pre-Bid conference will be held on Thursday, June 4, 2009 at 1002 North School Street, Building E (Board Room) at 10:00 a.m. H.S.T.

Prior to submittal of an offer, Bidder may inspect the housing sites to become thoroughly familiarized with existing conditions and the amount and kind of work to be performed. Submission of an offer shall be evidence that the interested bidder understands the scope of work and shall comply with these specifications. No additional compensation will be made by reason of any misunderstanding or error regarding conditions at the service areas or the amount and kind of work to be performed.

Impromptu questions will be permitted at the site inspection and informal answers will be provided at the discretion of the HPHA's contracting office. Verbal answers provided at the Pre-Bid Conference and/or site inspection are not binding and are only intended as general direction. Written, formal official responses to substantive questions will be provided to each interested bidder as set forth in paragraph VI herein below.

VI. Submission of Questions

Bidders may submit written questions to the IFB Contact Person identified in Section 2 of this IFB. The deadline for submission of written questions is 4:30 p.m. H.S.T. on June 8, 2009. All written questions will receive a written response from the state contracting office. Email and facsimiles transmissions shall not be accepted. State contracting office responses to applicant written questions will be sent by June 10, 2009.

VII. Submission of Sealed Bids

- A. **Forms/Formats** – Bid forms may be found on the HPHA website at: www.hpha.hawaii.gov and are attached at Section 3 of this IFB.

Bidders shall also follow the U.S. Department of Housing and Urban Development's Instructions to Offerors Non-Construction form HUD 5369-B and Certifications and Representations of Offers Non-Construction Contract, form HUD 5369-C. The instructions are attached to this IFB.

- B. **Bid Submittal** – Bids must be postmarked by U.S. Postal Service or hand delivered by the date and time designated in the Notice to Bidders. Any bids post-marked or received after the designated date and time shall be rejected. All bids must be in the State's possession by the submittal time deadline to be considered responsive. Note that postmarks must be by the U.S. Postal Service or they will be considered hand-delivered and shall be rejected if late. Email and facsimile transmissions shall not be accepted.

- C. **Wages and Labor Law Compliance** – Prior to entering into an Contract in excess of \$25,000, bidders shall certify that it complies with section 103-55, HRS, Wages, hours, and working conditions of employees of successful bidders performing services. Section 103-55, HRS provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Bidders are further advised that in the event of an increase in wages for public employees performing similar work during the period of the Contract, the successful bidder(s) shall be obligated to provide wages not less than those increased wages.

Interested bidder's shall complete and submit the attached Wage Certification certifying that the services required will be performed pursuant to section 103-55, HRS.

The successful bidder shall be further obliged to notify his employees performing work under this contract of the provisions of section 103-55, HRS, and of the current wage rates for public employees performing similar work. Successful bidder may meet this obligation by posting a notice to this effect in Successful bidder's place of business in an area accessible to all employees.

- F. Confidential Information** – If a Bidder believes that any portion of a bid contains information that should be withheld as confidential, the Bidder shall request in writing nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the bid, be clearly marked, and shall be readily separable from the bid documents to facilitate eventual public inspection of the non-confidential sections of the bid documents. Note that price is not considered confidential and will not be withheld.

VIII. Discussion with Bidders Prior to Bid Submission

Discussions may be conducted with potential bidders to promote understanding of the contracting office's requirements.

IX. Opening of Bids

Upon receipt of bids by the state contracting office at the designated location, bids, modifications to bids, and withdrawals of bids shall be date-stamped, and when possible, time-stamped. All documents so received shall be held in a secure place by the state contracting office and shall not be examined for evaluation purposes until the submittal deadline. Procurement files shall be open to public inspection after a Contract has been awarded and executed by all parties.

Sealed bids received by the due date and time shall be opened at the bid opening. All bids must be in the STATE's possession by the submittal time deadline. Bid Opening will commence at 10:15 a.m. HST on June 12, 2009 at 1002 North School Street, Bldg D, Honolulu, Hawaii 96817.

X. Additional Materials and Documentation

Bid samples or descriptive literature should not be submitted unless specifically requested within the technical specifications. Any unsolicited documentation, literature, samples, or brochures will not be examined or tested, and will not be deemed to vary any of the provisions of this IFB.

XI. IFB Amendments

The State reserves the right to amend this IFB at any time prior to the closing date for the final revised bids. Interested bidders will be notified of the amendments through verbal or written communication.

XII. Cancellation of the Invitation for Bids

The invitation for bid may be canceled and any or all bids may be rejected in whole or in part at the HPHA's sole discretion when it is determined to be in the best interests of the HPHA.

XIII. Costs for Bid Preparation and Verification

Any costs incurred by bidders in preparing or submitting a bid are the bidder's sole responsibility. Any costs incurred by the selected successful bidder prior to the execution of an Contract are not eligible for reimbursement.

Costs incurred in connection with the review, inspection and verification of information provided in the Bid Form shall be the bidder's sole responsibility.

Bidders shall ensure that HPHA is provided with the written authorization(s) necessary to verify information provided in the Bid Form.

XIV. Mistakes in Bids

While bidders are bound by their bids, circumstances may arise where a correction or withdrawal of bids is proper. An obvious mistake in a bid may be corrected or withdrawn, or waived by the bidder to the extent that it is not contrary to the best interest of the contracting office or to the fair treatment of other bidders. Mistakes in bids shall be handled as provided for in Section 3-122, Hawaii Administrative Rules ("HAR") and HUD requirements at 7460.8.

XV. Rejection of Bids

The State reserves the right to consider as acceptable only those bids submitted in accordance with all requirements set forth in this IFB and which demonstrate an understanding of the service specifications. Any bid offering any other set of terms and conditions contradictory to those included in this IFB may be rejected without further notice.

A bid may be automatically rejected if it is:

1. Determined to be unreasonable in price, including not only the total price of the bid, but the prices for individual items as well;
2. Materially unbalanced. A bid is materially unbalanced if there is a reasonable doubt that the bid would result in the lowest overall cost, even though it is the lowest bid, or the bid is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment (an example of a materially unbalanced bid is one where the bidding is at a very high price for the first item and extremely low for subsequent items.)

XVI. Notice of Award

If made, an award shall be as follows:

1. Awarded to the responsible and responsive bidder submitting the lowest total sum

bid price in the sealed bid forms.

2. Interested bidder(s) must submit a bid for all projects in each group to qualify for an award.
3. In the case of a tie, the bid shall be awarded by the flip of a coin or some other random means of selection to be determined by the State.

Any Contract arising out of this solicitation is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the U.S. Department of Housing and Urban Development as required by statute, regulation, rule, order or other directive.

The Successful Bidder shall receive a Notice of Award, which will indicate the group(s) that the Successful Bidder has been selected to provide services under this IFB.

No work is to be undertaken by the Successful Bidder(s) prior to the Contract commencement date. The HPHA is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Successful Bidder prior to the starting date.

Bidder shall produce documents to the procurement officer to demonstrate compliance with §3-122-112, HAR, Responsibility of Bidder.

The Successful Bidder receiving award shall be required to enter into a formal written contract. The general conditions of the contract are attached and service specifications are included herein.

XVII. Protests

A bidder may protest the solicitation or award of services only for a serious violation of procurement policies and operational procedures. Only the following matters may be protested:

- (1) A state contracting office's failure to follow procedures established by Chapter 103D, HRS;
- (2) A state contracting office's failure to follow any rule established by Chapter 103D, HRS; and
- (3) A state contracting office's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the state contracting office.

The Notice of Protest shall be mailed by USPS or hand delivered to the head of the State Contracting Office conducting the protested procurement and the Procurement Officer

who is conducting the procurement (as indicated below) within five working days of the postmark of the Notice of Non-Award sent to the protestor. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the State Contracting Office.

Head of State Contracting office		Procurement Officer	
Name:	Chad K. Taniguchi	Name:	Rick Sogawa
Title:	Executive Director	Title:	Acting Procurement Officer
Mailing Address:	P.O. Box 17907 Honolulu, Hawaii 96817	Mailing Address:	P.O. Box 17907 Honolulu, Hawaii 96817
Business Address:	1002 North School Street Honolulu, Hawaii 96817	Business Address:	1002 North School Street Honolulu, Hawaii 96817

XVIII. Availability of Funds

The award of a contract and any allowed renewal or extension, is subject to allotments made by the Director of Finance, State of Hawaii, pursuant to Chapter 37, HRS, and subject to the availability of State and/or Federal funds.

XIX. Monitoring and Evaluation

The Successful Bidder's performance of the Contract will be monitored and evaluated by the OIC and/or his/ her designated representative.

XX. General and Special Conditions of Contract

The general conditions that will be imposed contractually are included in Attachment 6 of the Contract and may be found on the SPO website. Special conditions may also be imposed contractually by the state contracting office, as deemed necessary. The HPHA reserves the right to make small or major modifications to the number of groups required contingent upon conditions that it is unable to anticipate now.

XXI. Cost Principles

HPHA shall utilize standard cost principles at Section 3-123, HAR, which are available on the State Procurement Office website. Nothing in this section shall be construed to create an exemption from any cost principle arising under federal law.

(END OF SECTION)

Section 2

Scope of Work & Specifications

Section 2

Specifications

I. Introduction

A. Purpose or need

The Hawaii State Legislature established the Hawaii Public Housing Authority (hereinafter "HPHA") under Chapter 356D, HRS. The HPHA consolidates all state housing functions and is administratively attached to the Department of Human Services. The authority is a public body and a body corporate and politic. The HPHA's role is to address the housing needs of low income families in Hawaii. The purpose of this IFB is to competitively procure tree trimming services for various federally funded Asset Management Projects located on Oahu.

B. Area of Service

The Successful Bidder shall be required to provide services to all projects. The address for each project is as follows:

Mayor Wright Homes	521 North Kukui Street Honolulu, Hawaii 96817
Kaahumanu Homes	Alokele and Kaiwiula Street Honolulu, Hawaii 96817
Kamehameha Homes	1541 Haka Drive Honolulu, Hawaii 96817
Waimaha Sunflower	85-186 McArthur Street Waianae, Hawaii 96792

C. Funding source and period of availability

Funds are subject to appropriation by the State's Director of Finance and/or U.S. Congress and allocation by the Governor, State Legislature and/or the U.S. Department of Housing and Urban Development (HUD). Funding and period of availability may change upon notice by the HPHA.

It is understood that the Contract shall not be binding unless the HPHA can document that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract. Any Contract entered into as a result of this Invitation for Bids is binding only to the extent that funds are certified as available and that the availability of funds in excess of the amount certified as

available shall be contingent upon future appropriations or special fund revenues.

II. General Requirements

A. Bid Preparation

1. The Interested Bidder shall comply with the Chapter 103D, HRS. Cost Principles for Purchase of Goods and Services and applicable HUD rules.
2. The Interested Bidder must have the appropriate tree trimming license from the State of Hawaii, Department of Commerce and Consumer Affairs at the time of bid opening. Bidder shall provide the license number on the Offer Form where indicated. Award will not be made to any bidder failing to meet this qualification requirement.
3. The Interested Bidder shall have an Arborist, certified by the International Society of Arboriculture (ISA), directly supervise, at all times, the tree trimming work specified herein at the time of bid opening. Bidder shall provide in the spaces provided on the Offer Form, the name of the ISA member providing supervision for the work herein, his/her membership number and membership expiration date.
4. The Interested Bidder must have no outstanding balances owing to the HPHA. Exceptions may be granted by and at the discretion of the Executive Director of the HPHA for debts recently acquired and for debts, which have a repayment plan approved by the Executive Director of the HPHA.
5. The Interested Bidder must be in good standing with the Department of Commerce and Consumer Affairs and shall submit a certificate to the HPHA with the bid.

To obtain a *Certificate of Good Standing* go online to www.hawaii.gov/dcca/areas/breg and follow the prompt instructions. To register or to obtain a "Certificate of Good Standing" by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). The "Certificate of Good Standing" is valid for six months from date of issue and must be valid on the date it is received by the contracting office. The Successful Bidders are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA.

6. Pursuant to Section 103D-328, HRS, the Successful Bidder shall be required to submit a valid tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) prior to execution of the Contract. The certificate is valid for six (6) months from the most recent approval stamp date on the certificate. The certificate must be valid on the date it is received by the contracting office.

The tax clearance certificate can be obtained from the State of Hawaii, DOTAX. The *Tax Clearance Application Form A-6 (Rev. 2003)* is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX

Website: http://www.hawaii.gov/tax/a1_1alphalist.html
Tel: (808) 587-7527 or 1(800) 222-7572

The application for the clearance is the responsibility of the interested bidder. The interested bidder must be submitted directly to the DOTAX or IRS, and not to the contracting office for processing.

7. Pursuant to §103D-310(c), HRS, Successful Bidder shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the contracting office.

The certificate of compliance may be obtained on the State of Hawaii, *DLIR APPLICATIONS FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAWAII ADMINISTRATIVE RULES, Form LIR#27* which is available at www.dlir.state.hi.us/LIR#27, or at the neighbor island DLIR District Offices. The DLIR will return the form to the successful bidder, who in turn shall submit it to the HPHA.

The application for the certificate is the responsibility of the successful bidder, and must be submitted directly to the DLIR and not to the contracting office for processing.

8. The Successful Bidder may choose to use the Hawaii Compliance Express ("HCE"), which allows business to register online through a simple wizard interface at: <http://vendors.ehawaii.gov/hce/splash/welcom.html>.

The HCE provides the Successful Bidder with a "Certificate of Vendor Compliance" with current compliance status of the issuance date to compliance with following State laws: Tax Clearance, Form A-6; Department of Labor and Industrial Relations, Application for Certificate of Compliance, Form LIR #27; and Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC.

9. The Successful Bidder shall maintain insurance acceptable to the HPHA in full force and effect throughout the term of this Contract. The policies of insurance maintained by the Successful Bidder shall provide the coverage.

<u>Coverage</u>	<u>Limit</u>
General Liability Insurance (occurrence form)	\$2,000,000.00 combined single limit per occurrence for bodily injury and property damage.
Automobile Insurance covering all owned, non-owned and hired automobiles.	Bodily injury liability limits of <u>\$1,000,000.00</u> each person and <u>\$1,000,000.00</u> per accident and property damage liability limits of <u>\$1,000,000.00</u> per accident.
Workers Compensation as required by laws of the State of Hawaii.	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the successful bidder and (in case any sub-successful bidder fails to provide adequate similar protection for all his employees) to all employees of sub-successful bidders.

The State of Hawaii and HPHA, its elected and appointed officials, officers, employees, and volunteer shall be named as additional insured as to operations performed under this Contract.

The Successful Bidder agrees to provide the Hawaii Public Housing Authority before the effective date of the contract, certificate(s) of insurance necessary to satisfy the HPHA that the Successful Bidder has complied with the insurance provisions of this Contract. The Successful Bidder shall keep such insurance in effect and the certificate(s) of insurance on deposit with the HPHA during the entire term of this Contract. Upon request by the HPHA, the Successful Bidder shall furnish a copy of the policy or policies.

Failure of the Successful Bidder to provide and keep in force such insurance shall be regarded as material default under this Contract. The HPHA shall be entitle to exercise any or all of the remedies provided in this contract for such default of the successful bidder.

The procuring of such required policy or policies of insurance shall not be construed to limit Successful Bidder's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, Successful Bidder shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.

The insurer shall notify the HPHA in writing of any cancellation or change in provisions thirty (30) calendar days prior to the effective date of such cancellation or change.

10. Bidders are advised that if awarded a contract, the Successful bidder must

furnish proof of compliance with the requirements of §3-122-112, HAR:

- Chapter 237, HAR, tax clearance;
- Chapter 383, HAR, unemployment insurance;
- Chapter 386, HAR, workers' compensation;
- Chapter 392, HAR, temporary disability insurance;
- Chapter 393, HAR, prepaid health care; and
- One of the following:

- i. Be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); or

Hawaii business. A business entity referred to as a "Hawaii business" is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, successful bidder shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A successful bidder's status as sole proprietor or other business entity and its business street address indicated on the successful bidder Form page 1 will be used to confirm that the successful bidder is a Hawaii business.

- ii. Be registered to do business in the State. (hereinafter referred to as a "compliant non-Hawaii business").

Compliant non-Hawaii business. A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, successful bidder shall submit a *CERTIFICATE OF GOOD STANDING*.

The above certificates should be applied for and submitted to the contracting office as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, a bid otherwise responsive and responsible may not receive the award. The certificate shall be submitted with the Successful Bidder's notice of interest.

11. No performance or payment bond is required.
12. Successful Bidder shall have a permanent office on the island of Oahu or the geographic area awarded from where it conducts business and where it will be accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable. Permanent office location and phone number shall be stated on the Bid.
13. The work performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended 12

U.S.C. 1701u. The purpose of this Section 3 is to ensure that employment and other opportunities generated by HUD assistance covered by Section 3 shall to be directed to low- and very low-income persons, particularly those who are recipients of HUD housing assistance.

The Successful Bidder must certify that they are under no contractual or other impediment that would prevent them from complying with part 135 regulations. The Successful Bidder must also certify that any vacant position that is filled after the Successful Bidder is selected, but before the Contract is executed was not filled to circumvent the Successful Bidders obligations under 24 CFR part 135.

14. Interested Bidder shall provide a minimum of three (3) financial references as requested on the Bid Form. Financial references will be contacted upon the receipt of Bidder Offer.

B. Type of Contract

The Successful Bidder shall be required to execute a Contract Based on Competitive Sealed Bids for Goods and Services. See sample Contract in Attachment 5.

C. Single or multiple contracts to be awarded

☐ Single ☐ Multiple ☒ Single & Multiple

D. Single or multi-term contracts to be awarded

☒ Single term (≤ 2 yrs) ☐ Multi-term (≥ 2 yrs.)

Initial term of contract:	Six (6) months
Length of each extension:	Up to six (6) months
Maximum length of contract:	12 months

The initial period shall commence on the contract start date. The following conditions must be met for an extension:

- Successful Bidder experienced cost savings and has unexpended funds available that can be used to provide additional goods and services; or
- The HPHA determines there is an ongoing need for the services and has funds to extend services not to exceed six (6) months. Contract extensions shall be awarded at the same or comparable rates as the primary Contract. Exceptions shall be granted upon satisfactory justification such as increase in cost of services or cost of living increase; and
- A supplemental Contract must be executed prior to expiration of the primary Contract; and

- The HPHA must obtain HUD approval in writing of the extension prior to execution of a supplemental Contract; and
- The Successful Bidder must obtain the HPHA approval in writing and a notice to proceed with the extension; and
- Necessary State and/or Federal funds are available and have been allotted for an extension.

The option to extend the Contract will be at the sole discretion of the HPHA. Changes to the number of trees, type of trees and description of service may be requested prior to the execution of the supplemental Contract at the same rate as proposed in the original bid unless price adjustments are provided herein.

Successful Bidder(s) shall provide the requested insurance information and a completed wage certificate. The successful bidder shall pay the State of Hawaii general excise tax and all other applicable taxes.

E. Bid Price

(Refer to Section 3 Bid Forms and Instructions page 28 for Bid Price calculations)

The total bid price per group shall include costs for all labor, equipment, materials, applicable taxes and any other expenses incurred to provide tree trimming services as specified herein. Interested Bidders are to specify the unit bid price per tree and the total bid price.

For evaluation purposes, Interested Bidders are to specify the number of workers and estimated number of hours to complete the job for each group on the Bid Form. The Total Bid Price shall include the estimated total labor amount plus other costs. Other costs may include but are not limited to equipment, materials, costs for benefits required by law, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance. Other costs shall not include cost for labor. All labor cost shall be included in the estimated total labor line item.

Bid price per hour shall be applicable to tree trimming services provided during work hours. The State is not responsible for and shall not pay overtime pay resulting from the Successful Bidder's scheduling of employees.

F. Statutory requirements of Section 103-55, HRS

Interested Bidders shall complete and submit the attached wage certification by which the Interested Bidder certifies that the services required will be performed pursuant to Section 103-55, HRS.

Interested Bidders are advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less

than wages paid to public officers and employees for similar work. Successful Bidders are further advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, Successful Bidder will be obligated to provide wages no less than those increased wages.

The State has determined that work to be done under this contract is similar to various Tree Trimmer positions; therefore, the Successful Bidder will be required to pay their employees the prevailing State wages for work performed under this contract. The hourly wages paid to these State positions are:

Class	Hourly Rate Eff 3/01/2009
Tree Trimmer Helper (BC 03)	\$16.43
Tree Trimmer (BC 07)	\$19.22
Tree-Trimmer-Truck Drive (BC 05)	\$17.77
Tree Trimmer-Heavy Truck Driver (BC 07)	\$19.22
Tree Trimmer Equipment Operator (BC 08)	\$20.00

G. Price adjustments

At the release of this bid solicitation, only the current wages of state employees performing similar work are known. If wages increase after the execution of the contract Successful Bidder may request an increase in contract price in order to correspondingly increase the wages of Bidder's employees performing the work, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as federal old age benefits, worker's compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

The Contractor will not be paid for any reimbursement of retroactive pay negotiated by the State. Successful Bidder's request for the increase must meet the following criteria:

1. At the time of bidding, if the Successful Bidder's hourly wage rate is greater than the prevailing State wage, the Successful Bidder's requests for increase will not be considered.
2. At the time of the request, the Successful Bidder must or must have provided documentation to show that it is in compliance with Section 103-55, HRS, i.e. its employee are being paid no less than the known wage of the State position listed herein. Documentation shall include the employees payroll records and a statement that the employees are being utilized for this contract.
3. Request for increase must be made in writing to the HPHA on a timely basis:

- a. Request for increase for the initial contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employees with adequate documentation that the Successful Bidder provided its employees a wage increase.
- b. Request for increase for a supplemental period of the contract must be made prior to the start of the supplement. Successful Bidder is to call the Contract Specialist named on the cover of this invitation for bids to obtain the current wage information or download the information from the Department of Human Resource Development's website at the following address:

<http://www.hawaii.gov/hrd/main/HRDInfoCentral/DocCentral/SalarySchedules/BU01/>

III. CONTRACT MONITORING & REMEDIES

A. Monitoring

1. The satisfactory provision of services shall be monitored by the OIC. Performance will be monitored on an ongoing basis by the HPHA through desk monitoring, site inspection and/or other methods by the OIC and his/her designated representative(s).
2. Should the bidder fail to comply with the requirements of the Contract, HPHA reserves the right to engage the services of another company to perform the services, to remedy the defect or failure and to deduct such costs from monies due to the Successful Bidder or to assess the Successful Bidder directly.
3. In the event the bidder fails, refuses, or neglects to perform the services in accordance with the requirements of this Invitation for Bids, and the Contract which is attached, HPHA reserves the right to purchase in the open market, a corresponding quantity of services. The HPHA will deduct from Successful Bidder such cost and from any moneys for the cost to HPHA of procuring such services due or that may thereafter become due to the Successful Bidder(s). In case money due to the Successful Bidder is insufficient for this purpose, the Successful Bidder shall pay the difference upon demand by HPHA. HPHA may also utilize all other remedies provided under the Contract and by law and rules.

B. Damages

1. Liquidated damages is fixed at the sum of FIFTY DOLLARS (\$50.00) for each calendar day the bidder fails to perform in whole or in part any of its obligations in accordance with the terms of paragraph 9 of the General Conditions. Liquidated damages may be deducted from any payments due or

to become due to the bidder.

2. The Successful Bidder shall repair all damages caused by bidder's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines, and buildings. If such repairs are not completed within a reasonable time, HPHA reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to bidder. In the event money due to the bidder is insufficient for this purpose, bidder shall pay the difference upon demand by HPHA.
3. The Successful Bidder shall replace all damaged plants as a result of the work, with the same kind, and size of plants and shall repair damages to capital improvements and non-contracted items.
4. The Successful Bidder shall take precautions against damages caused by the hauling of large branches from falling places to shredder or trash removal vehicles. All damages shall be repaired at the expense of the bidder. If such repairs are not completed within a reasonable time, HPHA reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to bidder. In the event money due to the Successful Bidder is insufficient for this purpose, the Successful Bidder shall pay the difference upon demand by HPHA.
5. Any holes and depressions caused by the Successful Bidder shall be repaired to the surrounding ground level with appropriate material.

D. Termination

HPHA reserves the right to terminate any Contract without penalty for cause or convenience as provided in the general conditions.

IV. SCOPE OF WORK & SPECIFICATIONS

The Successful Bidder(s) shall provide tree trimming services described in Attachment 4 to include all labor, equipment, tools and materials required to perform the work in accordance with the specifications herein.

In return for the bid price(s) submitted, the HPHA will purchase all of their requirements for tree trimming services for projects described in Attachment 4 to the successful low bidder. However, when the type or quality of service is not suited to the agency's purpose, an exception to this commitment may be granted by the Procurement Officer upon written notice to the Successful Bidder.

Frequency and exact quantities listed on the bid are for the purpose of calculating single

unit pricing without giving weight to any particular item. No guarantee to purchase an exact amount of services is intended or implied.

A. Management Requirements & Qualifications (Minimum requirements)

1. Personnel

- a. The Successful Bidder shall ensure that all personnel meet the minimum qualifications, including licensing and experience requirements, as appropriate. The Successful Bidder shall be solely responsible for the behavior and conduct of their employees or agents on the HPHA property.
- b. During the performance of this Contract, the Successful Bidder agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, disability ancestry/national origin, familial status, age, marital status, HIV infection, sexual orientation, gender identity or expression. The Successful Bidder will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, disability ancestry/national origin, familial status, age, marital status, HIV infection, sexual orientation, gender identity or expression. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Successful Bidder shall insert provisions similar to the foregoing in all subcontracts.
- c. The Successful Bidder shall hire or subcontract a certified arborist or horticulturalist to oversee all work specified in this IFB.
- d. A minimum of one (1) English-speaking supervisor per crew shall be present to supervise the performance of work at all times.
- e. All safety requirements shall be exercised including, but not limited to, the use of reinforced climbing belts, hardhats, shoes, eye protectors, traffic cones, flags, and ropes to direct pedestrians and vehicles away from hazards and rope work (or other reasonable substitute) to safely lower heavy trimmings. The Successful Bidder shall bear full responsibility for the safety and appropriateness of its workers' apparel and personal gear.

2. Administrative

- a. The OIC will submit a report to the Successful Bidder listing any discrepancies or contract violation(s) which need correction. These discrepancies or contract violation(s) must be corrected by the time periods specified herein for payment adjustment purposes. Liquidated

damages shall apply for failure to comply.

3. Payment

- a. Section 103-10, HRS provides that HPHA shall have thirty calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. For this reason, HPHA will reject any bid submitted with a condition requiring payment within a shorter period. Further, HPHA will reject any bid submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS as amended.
- b. The Successful Bidder shall submit a monthly invoice, one (1) original and three (3) copies, for goods and services rendered to:

Hawaii Public Housing Authority
Attn: Tree Trimming Contract no. _____
P.O. Box 17907
Honolulu, HI 96817

The date of the invoice shall be the latter of the following: 1) date of invoice or 2) postmark of original invoice received via USPS or other method of delivery.

- c. All invoices shall reference the Contract number assigned to this Contract. Payment shall be in accordance with Section 103-10, HRS, upon certification by the OIC that the Successful Bidder has satisfactorily performed the services specified.

Payment shall be made on the actual number of trees trimmed or removed according to the unit bid price submitted on the Bid Form. Successful Bidder shall submit invoices for payment, listing the service date and type of tree. All charges for additional work, if any, shall be described, and the charges shall be computed at the contracted rate per hour on a separate invoice. The Successful Bidder shall clearly indicate any adjustments made to the billing statement for work not performed (e.g. liquidated damages for failure to deliver the services within the required timeline).

- d. Charges for emergency situations, increases and changes in tree trimming services shall be submitted on a separate invoice and will be paid for by purchase order.
- e. For final payment, the Successful Bidder must submit a valid original tax clearance certificate "Certification of Compliance for Final Payment" (SPO Form-22). A copy of the Form is available at www.spo.hawaii.gov. Select "forms for Vendors/Contractors" from the Chapter 103D, HRS pop

up menu.

The Successful Bidder is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

B. Tree Trimming Terminology

- a. Branch Collar: The bark tissue formed between the branch and the main trunk; or, between any branches or limbs.
- b. Compartmentalization: Process where tree bark closes over cut ends to create wound closure.
- c. Crown: The part of the tree, made of branches and leaves, from the lowest branches to the top of the tree.
- d. Crown cleaning: Removing dying, decayed, diseased, weak, poorly attached, and dead branches from the crown.
- e. Crown containment: Removing branches growing outside from and not part of the exterior surface of the crown.
- f. Crown raising: Removing the lowest branches of the crown. Also called raising the ceiling of the tree.
- g. Crown thinning: Removing branches to increase light penetration, air movement, and reduce weight of the crown.
- h. Dead and diseased wood: Dead or dying branches or woody tissue. Branches are dying where recovery will not occur and / or branches will never thrive.
- i. Lion's tail: Conditions where limb or branch is bare of foliage except at the tips. The limb resembles the tail of a lion. Condition results from trimming operations, or tree's response to stub cutting limb.
- j. Stump grind: Mechanical grinding of the stump and any above and below grade roots to render the tree unable to grow.
- k. Stub cutting: Trimming operation where branches are cut too far from the branch collar to allow for compartmentalization of the cut end. Stub cut branches typically have no foliage.
- l. Suckers: Vigorous, usually vertical, shoots growing from tree root area.

- m. Topping or heading: Trimming operation where crown height or spread is reduced by removing trunk, limbs, or branches without regard for compartmentalization of the cut end. This would be similar to stub cutting.
- n. Water sprouts: Vigorous, usually vertical, shoots growing from above grade portions of the tree.

C. Minimum and/or Mandatory Requirements for Goods/Services

1. General

- a. The OIC shall coordinate a schedule with the Successful Bidder for tree trimming services. Any changes to the schedule shall be agreed upon by both parties no less than five (5) business days prior to the scheduled date.
- b. All work must be done between 7:45 a.m. and 3:30 p.m. Monday through Friday, excluding State and Federal holidays.
- c. The Successful Bidder shall provide proper safety signs, as necessary, and shall not obstruct the free flow of traffic, ingress and egress of private driveways and public right-of-way access. The Successful Bidder shall also take adequate measures to alert, warn and protect the public from any danger of falling or flying debris, in and around the immediate work site.
- d. The Successful Bidder's vehicles shall be restricted to existing roadways located in the projects. No vehicles shall be permitted on grassy areas or walk ways without prior approval from the OIC.
- e. If necessary, the Successful Bidder may utilize a truck or trucks with a hoist and bucket or similar equipment in order to carry out the trimming, shaping and pruning work in accordance with the specifications of this IFB.

2. Work Requirements

- a. The Successful Bidder shall use best horticultural practices to perform all tree trimming operations.
- b. The Successful Bidder shall determine if trees to be trimmed exhibit conditions hazardous to vehicles, buildings, walls, paving, irrigation systems, planting, and other site amenities and the general public; and detrimental to the well-being of the tree. If such conditions exist, the Successful Bidder shall immediately notify the OIC.
- c. The use of climbing spurs and spikes shall be allowed for climbing coconut trees.

- d. All pruning cuts shall be performed with pruning shears, lopping shears, hand, pole or chain saws only. Cane knives and machetes are only allowed for services being performed on coconut trees.
- e. Proper pruning cuts shall be performed to prevent bark tears and to promote compartmentalization of cut ends.
- f. Stub cutting is not allowed. Cuts shall be made close to the branch collar.
- g. Lion's tailing is not allowed. After trimming adequate foliage shall remain to provide proper growth and vigor of the tree limbs.
- h. Topping or heading is not allowed.
- i. Rope work or a crane shall be used to prevent damages from falling logs and branches. Under no circumstances shall large limbs be allowed to "fall with force" on the HPHA's properties. The Successful Bidder may be required to lower all branches with ropes to prevent damage to the understory (e.g., any plants growing under the tree branches to be removed) if specified.
- j. All dead, dying wood and stub cuts shall be removed from the tree.
- k. Watersprouts in the crown shall be selectively removed to minimize flush of watersprouts after trimming.
- l. Clearing trees from trees or other objects shall be horizontal clearance. Clearing trees above trees or other objects shall be vertical clearance. Clearing all around trees or other objects shall be horizontal and vertical clearance.
- m. Clearing from wires shall be performed by Tree Trimmer qualified and certified to do the work.
- n. Raising the ceiling height, crown raising, shall be done to heights above finish grade, unless indicated otherwise.
- o. All trees near a building or shall be cut back from building.

3. Type of Service

Tree removal and uprooted

- a. Trees to be removed shall be stump ground. All stump and above grade roots shall be ground to 8" - 12" depth. After grinding, grindings shall be removed and hole shall be backfilled with grindings and soil, so at final settlement top is level with surrounding finish grade.

- b. If the trees are uprooted, the stump shall be cut twelve inches (12”) below ground level, treated with herbicide mixture as described above and backfilled with top soil.

Root Pruning

- a. Root pruning above or below ground level in accordance with accepted horticultural practices unless directed by the OIC or his representative.
- b. Where it is determined by the Successful Bidder and approved by the OIC, the Successful Bidder will install an acceptable biobarrier.

Removal of Trimmings and Debris

- a. The Successful Bidder shall completely remove all trimmings and any other debris resulting from the work on a **daily** basis. All refuse shall be disposed of off-site at locations meeting all Federal, State and County ordinances and regulations. As possible, the Successful Bidder shall dispose of refuse at recycling facilities. Burning of trimmings and debris at the work site shall not be allowed.
- b. The Successful Bidder shall not dispose of tree trimmings or debris on HPHA property or in HPHA’s trash receptacles.
- c. Trimmings and debris shall not be left unattended at the work site by the Successful Bidder, which may include sawdust generated as a result of the work.
- d. The HPHA reserves the right to take, remove and use any of the trimmed materials. In such an event, the HPHA shall segregate and remove the desired trimmings from the work site. The HPHA shall notify the Successful Bidder prior to the start of work of its intention to exercise this right.
- e. There shall be no exceptions to the requirements on removal of trimmings and debris.

4. Reporting

- a. Unless otherwise instructed, the successful bidder shall report to the OIC the progress of the work giving the location and number of trees trimmed or pruned. The Successful Bidder shall also furnish information on the location and the number of trees to be trimmed and pruned for that current day. Any tree that is diseased, damaged or in adverse condition must also be reported by the Successful Bidder. All work is subject to approval by the OIC.

5. Inspection

- a. Work tools, materials, supplies, appurtenances and other equipment shall be subject to inspection at the work site by the OIC during and after the completion of work.
- b. All corrective measures shall be documented on inspection forms. The Successful Bidder shall comply with all notices for corrective work or correction of defective tools and equipment and shall perform all additional work to correct the existing substandard condition.
- c. Final inspection by the HPHA shall be made within two (2) days after completion of the job.

6. Increase, Decrease, or Change in Services

- a. The HPHA reserves the right to increase or decrease the requirement for tree trimming services during inspection and also during the contract period.
- b. All requests for increased services shall be provided at the same or similar rates for trees of like shape, size, or species.
- c. Adverse conditions which may require major field changes not stated in the contract must be reported to the OIC or his authorized representative. All modifications required prior written approval by the HPHA.

(END OF SECTION)

Section 3

Bid Forms and Instructions

Section 3

Bid Forms and Instructions

General Instructions for Completing Forms

- *Bids shall be submitted to the HPHA in the prescribed format outlined in this IFB*
- *No supplemental literature, brochures or other unsolicited information should be included in the bid packet.*
- *A written response is required for each item unless indicated otherwise.*
- *Bid documents and all certifications should be completed with black ink.*

I. Bid Forms

The bid forms must be completed and submitted to the HPHA by the required due date and time, and in the form prescribed by the state contracting office. Email and facsimile transmissions shall not be accepted.

Bidder shall submit its bid under Bidder's exact legal name that is registered with the Department of Commerce and Consumer Affairs and shall indicate this exact legal name in the appropriate space on Bid at page 1. Failure to do so may delay proper execution of the contract.

Bidders are required to submit the following certifications with the Bid Form. In lieu of Items b, c, d below Bidders may also submit an original consolidated CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system, "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

- a. Wage Certification;
- b. Department of Labor and Industrial Relations, Certificate of Compliance with Section 3-122-112, HAWAII ADMINISTRATIVE RULES, Form LIR#27;
- c. Department of Commerce and Consumer Affairs, Certificate of Good Standing; and
- d. Corporate Resolution evidencing who is authorized to sign bid documents and contracts on behalf of the Bidder.

Bidder's authorized signature shall be an original signature in ink. If the Bid on page 1, is unsigned or the affixed signature is a facsimile or a photocopy, the bid shall be automatically rejected. If the bid is not signed by an authorized representative as submitted on the corporate resolution, the bid shall be automatically rejected. Bidder shall include the notary public affidavit and at least three references for whom it has performed similar services.

A bid security deposit is not required for this IFB. Bid forms are attached to this IFB.

Bid Quotation. The total bid price per group shall include costs for all labor, equipment, materials, applicable taxes and any other expenses incurred to provide tree trimming services as specified herein. Interested Bidders are to provide the information requested on the Bid Form regarding the unit bid price per tree and the total bid price for each group. Interested Bidders shall use the following formula to determine the Total Bid Price for each group:

$$\begin{array}{ccccc} \text{Total} & & \text{Unit bid price} & & \text{Total Bid} \\ \text{Quantity} & \times & \text{per tree} & = & \text{Price} \end{array}$$

For evaluation purposes, Interested Bidders are to specify the number of workers and estimated number of hours to complete the job for each group on the Bid Form. The Total Sum Bid Price shall include the estimated total labor amount plus other costs. Other costs may include but are not limited to equipment, materials, costs for benefits required by law, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance. Other costs shall not include cost for labor. All labor cost shall be included in the estimated total labor line item.

Deductibles. If the apparent low bid received in response to this solicitation exceeds the HPHA's available funding for the proposed contract work, the HPHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the HPHA's available funding, then award shall be made to that bidder.

Tax Liability. The following information is provided to assist vendors in determining their tax liability under this solicitation. For additional information and assistance, bidders may call the State of Hawaii Department of Taxation, telephone (808) 587-4242 or (808) 587-1611.

Hawaii Vendors. A vendor doing business in the State of Hawaii, as evidenced by its Hawaii general excise tax (GET) license number, is liable for the Hawaii GET and all applicable federal, state, and county taxes and fees.

Tax Exempt Vendors. If an offeror is a person exempt by the HRS from paying the GET and use tax and therefore not liable for the taxes under this solicitation, offeror shall state its tax-exempt status and cite the HRS chapter or section that allows the exemption.

Tax Equalization Provision. For evaluation purposes, pursuant to §103-53.5, HRS, as amended, the price offer submitted by an offeror not liable for the GET and use tax under this solicitation, shall be increased by the current rates of the GET and the use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

II. HUD Forms

A. Instructions to Offerors Non-Construction, form HUD 5369-B

The form HUD 5369-B is provided for bidder's information and reference. Form HUD 5369-B is attached to this IFB and can also be found at www.hudclips.org

B. Certification and Representations of Offerors, form HUD 5369-C

The form HUD 5369-C must be completed and submitted to the HPHA with the bid form by the required due date and time, and in the form prescribed by the state contracting office. The certification must be signed and dated by an authorized representative. Form HUD 5369-C is attached to this IFB and can also be found at www.hudclips.org

C. General Conditions, form 5370-C

The form HUD 5370-C is provided for bidder's information and reference.

III. General Conditions

The general conditions of the contract are attached for bidder's review and information. The general conditions shall be incorporated into the contract with the Successful Bidder.

(END OF SECTION)

Section 4

Bid Evaluation & Award

Section 4

Bid Evaluation & Award

I. Bid Evaluation

Each bid offer will be reviewed for exact conformity of the requirements in the IFB, known as a responsible bid. Information provided in/with the Bid Offer will be used to determine whether the bidder has the technical and financial capacity to deliver the goods or services, known as a responsive bid.

II. Method of Award

Award shall be made the lowest responsible and responsive bidder total sum bid price. To be considered a responsive bid and eligible for an award, the bidder must bid on all 16 groups. The winning bidder shall enter into Contract with the State for the six (6) month period upon the availability and receipt of Federal and/or State funds.

The option to extend the Contract will be at the sole discretion of the State. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the original bid, unless price adjustments are made and conditions are met as described in Section 2 Specification of this IFB.

Pursuant to Chapter 3-122-35 HAR, in the event there are no responsive and responsible bids an alternative procurement method may be used by the HPHA. The HPHA may conduct a resolicitation or an alternative procurement method.

(END OF SECTION)

ATTACHMENTS

- | | | |
|-----|--|------------------------------|
| 1. | Wage Certificate | Due June 12, 2009 |
| 2. | Bid Forms | Due June 12, 2009 |
| 3. | Area of Service | For Bidder's information/use |
| 4. | Specifications | For Bidder's information/use |
| 5. | Sample Contract Based on Competitive Sealed Bids for
Goods and Services AG-003 Rev 11/15/2005 | For Bidder's information/use |
| 6. | General Conditions, State AG-008 Rev 4/15/2009 | For Bidder's information/use |
| 7. | General Conditions, Federal form HUD 5370-C | For Bidder's information/use |
| 8. | Instructions to Offerors, form HUD 5369-B | For Bidder's information/use |
| 9. | Certification and Representations of Offerors,
form HUD 5369-C | Due June 12, 2009 |
| 10. | Salary Schedules, BU 01 | For Bidder's information/use |
| 11. | Maps | For Bidder's information/use |

WAGE CERTIFICATE**SUBJECT: BID NO.: IFB-PMB-2009-20****DESCRIPTION OF PROJECT**

Invitation-For-Bids (IFB) for Furnishing Tree Trimming Services at
Various Federal Funded Asset Management Projects on Oahu

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS.), I hereby certify that if awarded the contract is in excess of \$25,000.00 the services will be performed under the following conditions:

1. The services shall be performed by employees at wages or salaries not less than wages or salaries paid to public officers and employees doing similar work.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by section 103-55, HRS.

BIDDER: _____

BY: _____
Signature of Person Authorized to Sign this Bid.

Please Print

NAME: _____

TITLE: _____

DATE: _____

IFB-PMB-2009-20

SEALED BID

Hawaii Public Housing Authority
Procurement Office
1002 North School Street, Bldg. "D"
Honolulu, HI 96817

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Sealed Invitation for Bid, Specifications and the General Conditions by reference made a part of this Bid and hereby submits the following offer to perform the work specified.

That the undersigned further understands and agrees that by submitting this Sealed Bid, 1) it is declaring its Bid is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) it is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Exact Legal Name of Offeror: _____

Business address: _____

City, State, Zip Code: _____

Hawaii General Excise Tax License I.D. Number: _____

Social Security or Federal I.D. Number: _____

Respectfully Submitted:

Authorized (Original) Signature

Date

Name and Title

Telephone/Fax number

State Department of Commerce and Consumer
Affairs License Type C-27 or C-27B License #:

Name of ISA Certified Arborist: _____
Certification No. _____ Expiration Date: _____

Offeror is: ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

State of Incorporation: ☐ Hawaii *☐ Other _____

*If "other", is corporate seal available in Hawaii? ☐ Yes ☐ No

Bidder shall list below business firms and/or government agencies to which he has provided tree trimming similar or identical to those required by the IFB.

	<u>Firm or Agency</u>	<u>Contact Person</u>	<u>Telephone No.</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

Insurance coverage to be provided by:

Commercial General Liability: _____

Name of Agent: _____

Telephone Number: _____

Workers Comp: _____

Automobile Insurance: _____

Signature of Offeror _____

The following bid is hereby submitted for providing tree trimming services for various Federal/State public housing sites on Oahu. Offeror must complete each line item for the 16 groups. Award shall be based on the total sum bid price of all 16 groups.

Group Number	Tree Description	Total Quantity		Unit Price		Total Price
Group 1	Shower Tree	10	x		=	
Group 2	Pink Tacoma	10	x		=	
Group 3	African Tulip	3	x		=	
Group 4	Monkey Pod	1	x		=	
Group 5	Shower Tree	2	x		=	
Group 6	Pink Tacoma	3	x		=	
Group 7	Shower Tree	46	x		=	
Group 8	Royal Palm	35	x		=	
Group 9	Kukui Nut	10	x		=	
Group 10	Monkey Pod	6	x		=	
Group 11	Plumeria	1	x		=	
Group 12	Shower Tree	2	x		=	
Group 13	Kukui Nut	12	x		=	
Group 14	Monkey Pod	9	x		=	
Group 15	Mango	2	x		=	
Group 16	Small Monkey Pod	1	x		=	
				Other costs:		
				Tax:		
				TOTAL Sum Bid Price		

Offeror _____
Name of Company

Employees Performing Services. Offeror shall list employees and their position description.

Name	Position/Description
	Arborist

Equipment/Vehicles. Offeror shall list type of equipment/vehicles to be used to provide specified services. License numbers shall be provided for vehicles and equipment. If a license number is not available, offeror, shall use designation letters A, B, C, etc. to signify different equipment, ie., wood chipper A, wood chipper B, etc.

Equipment	License Number

For evaluation purposes the Offeror shall complete the following:

Class	Estimated No. of Workers	Estimated No. of Labor Hours	Hourly Rate
Tree Trimmer Helper (BC 03)			
Tree Trimmer (BC 07)			
Tree-Trimmer-Truck Drive (BC 05)			
Tree Trimmer-Heavy Truck Driver (BC 07)			
Tree Trimmer Equipment Operator (BC 08)			

Offeror _____
Name of Company

AREA OF SERVICE

Asset Management Project	Address	Group Numbers
Mayor Wright Homes	521 North Kukui Street Honolulu, Hawaii 96817	Group No. 1 to 6
Kamehameha Homes	1541 Haka Drive Honolulu, Hawaii 96817	Group No. 7 to 8
Kaahumanu Homes	Alokele and Kaiwiula Street Honolulu, Hawaii 96817	Group No. 9 to 13
Waimaha Sunflower	85-186 McArthur Street Waianae, Hawaii 96792	Group No. 14 to 16

Group Number	Type of Tree	Description of Work	Qty	Location	Area of Service
Group 1	Shower Tree	Cut down and remove to ground level.	1	Bldg. 8D - see map	Mayor Wright Homes
		Stump to be removed below grade.	1	Bldg. 8C - see map	Mayor Wright Homes
		Hole created to be filled with mulch.	4	Bldg. 11 F - see map	Mayor Wright Homes
		Look for yellow painted mark on tree	2	Bldg. 12 A - see map	Mayor Wright Homes
Group 2	Pink Tacoma	Look for yellow painted mark on tree	1	Next to Bldg. 13 parking - see map	Mayor Wright Homes
		Cut down and remove to ground level.	3	Vineyard st corner of Bldg. 22 - see map	Mayor Wright Homes
		Stump to be removed below grade.	6	Back of Bldg. 17 to corner of king st - see map	Mayor Wright Homes
		Hole created to be filled with mulch.	1	Liliha St end of Bldg. 19 - see map	Mayor Wright Homes
Group 3	African Tulip	Look for yellow painted mark on tree	1	Bldg. 24 - f - see map	Mayor Wright Homes
		Cut down and remove to ground level.	2	Bldg. 24 - B - see map	Mayor Wright Homes
		Stump to be removed below grade.	2	Bldg. 30 A - B - see map	Mayor Wright Homes
		Hole created to be filled with mulch.	1		Mayor Wright Homes
Group 4	Monkey Pod Tree	Look for yellow painted mark on tree	1		Mayor Wright Homes
		Cut down and remove to ground level.	1	Back of Bldg. 26 C - see map	Mayor Wright Homes
		Stump to be removed below grade.	1		Mayor Wright Homes
		Hole created to be filled with mulch.	1		Mayor Wright Homes
Group 5	Shower Tree	Look for yellow painted mark on tree	1		Mayor Wright Homes
		Cut down and remove to ground level.	2	Bldg. 4 - A - D see map	Mayor Wright Homes
		Stump to be removed below grade.	2		Mayor Wright Homes
		Hole created to be filled with mulch.	2		Mayor Wright Homes
Group 6	Pink Tacoma	Look for yellow painted mark on tree	1		Mayor Wright Homes
		Cut down and remove to ground level.	1	Between the back of Bldg. 19 - 20 see map	Mayor Wright Homes
		Stump to be removed below grade.	1	Front of Bldg. 28 - C see map	Mayor Wright Homes
		Hole created to be filled with mulch.	1	Front of Bldg. 24 - A	Mayor Wright Homes
Group 7	Shower Tree	Look for yellow painted mark on tree	1		Mayor Wright Homes
		Cut down and remove to ground level.	46	See Kamehameha Homes map	Kamehameha Homes
		Stump to be removed below grade.	46		Kamehameha Homes
		Hole created to be filled with mulch.	46		Kamehameha Homes

Specifications

Attachment 4

Group Number	Type of Tree	Description of Work	Qty.	Location	Area of Service
Group 8	Royal Palms	Trim all lower Fronds, Fruits and Fibers	35	Both entrance and exit areas of property - see map	Kamehameha Homes
Group 9	Kukui Nut	Cut down and remove to ground level. Stump to be removed below grade. Hole created to be filled with mulch. Look for yellow painted mark on tree	2 2 3 1	By Bldg. 1 - see map By Bldg. 11 - see map By Bldg. 19 - see map By the corner of Bldg. 18 - see map	Kaahumanu Homes Kaahumanu Homes Kaahumanu Homes Kaahumanu Homes
Group 10	Monkey pod	Cut down and remove to ground level. Stump to be removed below grade. Hole created to be filled with mulch. Look for yellow painted mark on tree	1 2 1 1	By Bldg. 1 - see map By Bldg. 17 - see map By the play ground are next to Bldg. 13- see map By Bldg. 6 - see map	Kaahumanu Homes Kaahumanu Homes Kaahumanu Homes Kaahumanu Homes
Group 11	Plumeria Tree	Cut down and remove to ground level. Stump to be removed below grade. Hole created to be filled with mulch. Look for yellow painted mark on tree	1	By Bldg. 9 - see map	Kaahumanu Homes
Group 12	Shower Tree	Cut down and remove to ground level. Stump to be removed below grade. Hole created to be filled with mulch. Look for yellow painted mark on tree	1 1	By Bldg. 14 - see map By Bldg. 8 - see map	Kaahumanu Homes Kaahumanu Homes
Group 13	Kukui Nut	Trimming of trees, contain tree height of no more than 11 ft tall with no more than a 8 ft crown. If need to completely remove the crown to maintain the tree height then do so	1 2 4 3 2	By the Ewa end of Bldg. 2 - see map By the front side of Bldg. 3 - see map By Alokele Street side of Bldg. 4 - see map By the front side of Bldg. 5 - see map By the Ewa side of Bldg. 6 - see map	Kaahumanu Homes Kaahumanu Homes Kaahumanu Homes Kaahumanu Homes Kaahumanu Homes

Specifications

Attachment 4

Group Number	Type of Tree	Description of Work	Qty.	Location	Area of Service
Group 14	Monkeypod	Cut down and remove to ground level.	3	In entrance of parking lot off of McArthur Street - see map	Waimaha Sunflower
		Stump and roots to be removed below grade.	1	In front of Bldg C in McArthur street parking lot - see map	Waimaha Sunflower
		Hole created to be filled with mulch.	1	On Daimond head, McArthur street side of Bldg G - see map	Waimaha Sunflower
		Look for yellow painted mark on tree	4	In the corner of Mill street and McArthur street parking lot - see map	Waimaha Sunflower
Group 15	Mango Tree	Cut down and remove to ground level.	2	Located at the far right back side corner of the property - see map	Waimaha Sunflower
		Stump and roots to be removed below grade.			
		Hole created to be filled with mulch.			
Group 16	Small Monkeypod	Look for yellow painted mark on tree			
		Cut down and remove to ground level.	1	Behind laundry room Bldg G - see map	Waimaha Sunflower
		Stump and roots to be removed below grade.			
		Hole created to be filled with mulch.			
		Look for yellow painted mark on tree			



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its _____ Executive Assistant _____,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
 whose address is 1002 North School Street Honolulu, Hawaii 96817
 _____ and TBD
 ("CONTRACTOR"), a _____ TBD
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of _____ TBD _____, whose business address and federal
 and state taxpayer identification numbers are as follows: TBD

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.

B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.

C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.

E. Pursuant to _____ Section 356D-4 Hawaii Revised Statutes _____, the STATE
(Legal authority to enter into this Contract)
 is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) _____
(Identify state sources)

or (2) SF-181 _____
(Identify federal sources)

or both, in the following amounts: State \$ _____
 Federal \$ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number 2009-20 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

TBD _____ DOLLARS
(\$ 0.00), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

Barbara E. Arashiro

(Print Name)

Executive Assistant

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL

(If available)

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, _____ before me appeared
_____ and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ and _____ of
_____, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: _____

(Notary Stamp or Seal)

Notary Signature _____ Date _____

NOTARY CERTIFICATION



STATE OF HAWAII

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



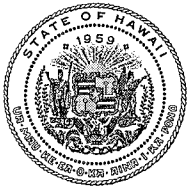
STATE OF HAWAII

SCOPE OF SERVICES

Contractor: _____

1. The CONTRACTOR shall, provide and perform the services set forth below that are in a satisfactory and proper manner as determined by the STATE, and in strict accordance with the terms and conditions of this Contract and the requirements of Invitation for Bids number IFB-PMB-2009-20, dated May 20, 2009. It is understood that this CONTRACT includes IFB-PMB-2009-20.
2. The CONTRACTOR shall furnish services at the projects as listed below:

Mayor Wright Homes	521 North Kukui Street Honolulu, Hawaii 96817
Kamehameha Homes	1541 Haka Drive Honolulu, Hawaii 96817
Kaahumanu Homes	Alokele and Kaiwiula Street Honolulu, Hawaii 96817
Waimaha Sunflower	85-186 McArthur Street Waianae, Hawaii 96792
3. The CONTRACTOR shall ensure that all personnel meet the minimum qualifications, including licensing and experience requirements, as appropriate.
 - a. The CONTRACTOR shall be solely responsible for the behavior and conduct of their employees or agents on HPHA property.
 - b. The CONTRACTOR shall ensure that no personnel employed under this Contract has been convicted of selling, dealing, or using crystal methamphetamine in or around any state or federal public housing under the jurisdiction of HPHA.
 - c. During the performance of this Contract, the CONTRACTOR agrees not to discriminate against any employee or applicant for employment pursuant to Chapter 378, HRS, and all Federal Equal Employment Opportunity Laws. The CONTRACTOR will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard of race, sex, familial status, HIV infection, color, disability, age, sexual orientation, relation, ancestry/national origin, marital status, gender identity or expression. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall insert provisions similar to the foregoing in all sub-contracts.
 - d. The CONTRACTOR shall hire or sub-contract a certified arborist or horticulturalist to



STATE OF HAWAII

SCOPE OF SERVICES

oversee all work specified in this IFB.

- e. A minimum of one (1) English-speaking supervisor per crew shall be present to supervise the performance of work at all times.
 - f. All safety requirements shall be exercised including, but not limited to, the use of reinforced climbing belts, hardhats, shoes, eye protectors, traffic cones, flags, and ropes to direct pedestrians and vehicles away from hazards and rope work (or other reasonable substitute) to safely lower heavy trimmings. The CONTRACTOR shall bear full responsibility for the safety and appropriateness of its workers' apparel and personal gear.
4. The Officer-In-Charge (OIC) shall coordinate a schedule with the CONTRACTOR for tree trimming services. Any changes to the schedule shall be agreed upon by both parties no less than five (5) business days prior to the scheduled date.
- a. All work must be done between 7:45 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays.
 - b. The CONTRACTOR shall provide proper safety signs, as necessary, and shall not obstruct the free flow of traffic, ingress and egress of private driveways and public right-of-way access. The CONTRACTOR shall also take adequate measures to alert, warn and protect the public from any danger of falling or flying debris, in and around the immediate work site.
 - c. The CONTRACTOR's vehicles shall be restricted to existing roadways located in the projects. No vehicles shall be permitted on grassy areas or walk ways without prior approval from the OIC.
 - d. If necessary, the CONTRACTOR may utilize a truck or trucks with a hoist and bucket or similar equipment in order to carry out the trimming, shaping and pruning work in accordance with the specifications herein.
5. The CONTRACTOR shall use best horticultural practices to perform all tree trimming operations.
- a. The CONTRACTOR shall determine if trees to be trimmed exhibit conditions hazardous to vehicles, buildings, walls, paving, irrigation systems, planting, and other site amenities and the general public; and detrimental to the well-being of the tree. If such conditions exist, the CONTRACTOR shall immediately notify the OIC.
 - b. The use of climbing spurs and spikes shall not be allowed for climbing palms.
 - c. All pruning cuts shall be performed with pruning shears, lopping shears, hand, pole or chain saws only. Cane knives and machetes are only allowed for coconut trees.



STATE OF HAWAII

SCOPE OF SERVICES

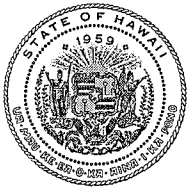
- d. Proper pruning cuts shall be performed to prevent bark tears and to promote compartmentalization of cut ends.
- e. Stub cutting is not allowed. Cuts shall be made close to the branch collar.
- f. Lion's tailing is not allowed. After trimming adequate foliage shall remain to provide proper growth and vigor of the tree limbs.
- g. Topping or heading is not allowed.
- h. Rope work or a crane shall be used to prevent damages from falling logs and branches. Under no circumstances shall large limbs be allowed to "fall with force" on the HPHA's properties. The CONTRACTOR may be required to lower all branches with ropes to prevent damage to the understory (e.g., any plants growing under the tree branches to be removed) if specified.
- i. All dead, dying wood and stub cuts shall be removed from the tree.
- j. Watersprouts in the crown shall be selectively removed to minimize flush of watersprouts after trimming.
- k. Clearing trees from trees or other objects shall be horizontal clearance. Clearing trees above trees or other objects shall be vertical clearance. Clearing all around trees or other objects shall be horizontal and vertical clearance.
- l. Clearing from wires shall be performed by Tree Trimmer qualified and certified to do the work.
- m. Raising the ceiling height, crown raising, shall be done to heights above finish grade, unless indicated otherwise.
- n. All trees near a building or shall be cut back from building.
- o. Trees to be removed shall be stump ground. All stump and above grade roots shall be ground to 8" - 12" depth. After grinding, grindings shall be removed and hole shall be backfilled with grindings and soil, so at final settlement top is level with surrounding finish grade.
- p. If the trees are uprooted, the stump shall be cut twelve inches (12") below ground level, treated with herbicide mixture as described above and backfilled with top soil.
- q. Root pruning above or below ground level in accordance with accepted horticultural practices unless directed by the OIC or his representative.



STATE OF HAWAII

SCOPE OF SERVICES

- r. Where it is determined by the CONTRACTOR and approved by the OIC, the CONTRACTOR will install an acceptable biobarrier.
6. The CONTRACTOR shall completely remove all trimmings and any other debris resulting from the work on a **daily** basis. All refuse shall be disposed of off-site at locations meeting all Federal, State and County ordinances and regulations. As possible, the CONTRACTOR shall dispose of refuse at recycling facilities. Burning of trimmings and debris at the work site shall not be allowed.
 - a. The CONTRACTOR shall not dispose of tree trimmings or debris on HPHA property or in HPHA's trash receptacles.
 - b. Trimmings and debris shall not be left unattended at the work site by the CONTRACTOR, which may include sawdust generated as a result of the work.
 - c. The HPHA reserves the right to take, remove and use any of the trimmed materials. In such an event, the HPHA shall segregate and remove the desired trimmings from the work site. The HPHA shall notify the CONTRACTOR prior to the start of work of its intention to exercise this right.
 - d. There shall be no exceptions to the requirements on removal of trimmings and debris.
7. Unless otherwise instructed, the CONTRACTOR shall report to the OIC the progress of the work giving the location and number of trees trimmed or pruned. The CONTRACTOR shall also furnish information on the location and the number of trees to be trimmed and pruned for that current day. Any tree that is diseased, damaged or in adverse condition must also be reported by the CONTRACTOR. All work is subject to approval by the OIC.
8. Work tools, materials, supplies, appurtenances and other equipment shall be subject to inspection at the work site by the OIC during and after the completion of work.
 - a. All corrective measures shall be documented on inspection forms. The CONTRACTOR shall comply with all notices for corrective work or correction of defective tools and equipment and shall perform all additional work to correct the existing substandard condition.
 - b. Final inspection by the HPHA shall be made within two (2) days after completion of the job.
9. The HPHA reserves the right to increase or decrease the requirement for tree trimming services during inspection and also during the Contract period.
 - a. All requests for increased services shall be provided at the same or similar rates for trees of like shape, size, or species.



STATE OF HAWAII

SCOPE OF SERVICES

- b. Adverse conditions which may require major field changes not stated in the Contract must be reported to the OIC or his authorized representative. All modifications required prior written approval by the HPHA.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Contractor: _____

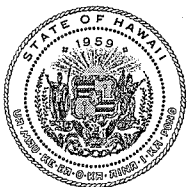
1. Subject to the receipt of Federal funds, the STATE agrees to pay the CONTRACTOR for services satisfactorily performed under this Contract, a sum of money not to exceed _____ for the six (6) month period as shown in the CONTRACTOR's Bid Offer Form, attached hereto as Exhibit B and made a part hereof.
2. Funds are subject to appropriation by the U.S. Congress and allocation by the U.S. Department of Housing and Urban Development (HUD). Funding and period of availability may change upon notice by HUD to STATE. If there should be insufficient funds for any portion of the remaining Contract period beyond the initial six (6) month period, the STATE may terminate the Contract or revise the amount/quantity of services required without penalty.
3. Upon execution of this Contract, payments shall be paid in accordance with and subject to the following:
 - a. CONTRACTOR shall submit a monthly invoice, one original, for services rendered to:
Hawaii Public Housing Authority
P.O. Box 17907
1002 North School Street
Honolulu, HI 96817
 - b. Section 103-10, HRS, provides that STATE shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. The date of the invoice shall be the latter of the two: 1) date of invoice or 2) postmark of original invoice received, by the HPHA via USPS or other method of delivery.
 - c. All invoices shall reference the Contract number assigned to this Contract. Payment shall be in accordance with Section 103-10, HRS, upon certification by the Officer-in-Charge that the CONTRACTOR has satisfactorily performed the services specified. The CONTRACTOR shall clearly indicate any adjustments made to the billing statement for work not performed (e.g. liquidated damages for failure to deliver the services within the required timeline).
 - d. Every four (4) weeks the Officer-in-Charge will submit a report to the CONTRACTOR listing any discrepancies or Contract violation(s) which need correction. These discrepancies or Contract violation(s) must be corrected by the next reporting period for payment adjustment purposes. Liquidated damages shall apply for failure to comply.
 - e. Charges for extra tree trimming services not specified in the Service Schedule or not added to the Contract by a supplemental Contract shall be submitted on a separate invoice and will be paid for by purchase order or state procurement card, as appropriate. In particular, charges for emergency services shall be invoiced in this manner.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

- f. For final payment, the CONTRACTOR must submit a valid original tax clearance certificate "Certification of Compliance for Final Payment" (SPO Form-22). If the CONTRACTOR fails to provide a valid tax clearance certificate within one month of the termination date of this Contract, the STATE shall assign the final payment in an amount not to exceed the tax liability to the Department of Taxation or the Internal Revenue Service; provided that the debt owed to the Department of Taxation shall be offset first.
4. The CONTRACTOR shall be reimbursed at the accepted bid price for providing tree trimming services as specified in IFB-PMB-2009-20.
 - a. The STATE is not responsible for and shall not pay overtime pay resulting from the CONTRACTOR's scheduling of employees.
 - b. The STATE will not consider requests for increases as a result of an increase to public officers and employees during the Contract period or any option period. It is the sole responsibility of the CONTRACTOR to comply with section 103-55, HRS.
5. The CONTRACTOR shall repair all damages caused by CONTRACTOR's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines, and buildings. If such repairs are not completed within a reasonable time, STATE reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to CONTRACTOR. In the event money due to the CONTRACTOR is insufficient for the purpose, CONTRACTOR shall pay the difference upon demand by STATE.



STATE OF HAWAII

TIME OF PERFORMANCE

Contractor: _____

1. The term of this Contract for Furnishing Tree Trimming Services at shall be for a 12-month period beginning on _____ and ending on _____.
2. No services shall be performed on this Contract prior to _____ or before a Notice to Proceed is issued, whichever is later.
3. The option to extend the Contract will be at the sole discretion of the STATE. The Contract may be extended, without the necessity of rebidding, at the same rates as proposed in the original bid, unless price adjustments are made and approved as provided herein:

Initial term of Contract:	six (6) months
Length of each extension:	Up to six (6) months
Maximum length of contract:	12 months

4. The initial period shall commence on the contract start date or Notice to Proceed, whichever is later. The following conditions must be met for an extension:
 - a. CONTRACTOR experienced cost savings and has unexpended funds available that can be used to provide additional services; or
 - b. STATE determines there is an ongoing need for the services and has funds to extend services, not to exceed a six (6) month period. Contract extensions shall be awarded at the same or comparable rates as the primary Contract.
 - c. A supplemental Contract must be executed prior to expiration of the primary Contract.
 - d. STATE must obtain HUD approval in writing of the extension prior to execution of a supplemental Contract.
 - e. The CONTRACTOR must obtain STATE approval in writing and a notice to proceed with the extension.
 - f. The STATE has determined that the CONTRACTOR has satisfactorily provided service over the current contract term.
 - g. Necessary State and/or Federal funds are appropriated and allotted for an extension.
5. Liquidated damages is fixed at the sum of FIFTY and no/100 Dollars (\$50.00) for each and every day the CONTRACTOR fails to perform in whole or in part any of its obligations. Liquidated damages may be deducted from any payments due or to become due to the CONTRACTOR.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE****1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

Chad K. Taniguchi

(Print Name)

Executive Director

(Print Title)

(Date)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

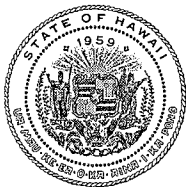
I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)



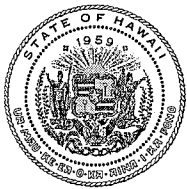
STATE OF HAWAII
SPECIAL CONDITIONS

Contractor: _____

1. The CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of this contract. The policies of insurance maintained by the CONTRACTOR shall provide the following coverage.

<u>Coverage</u>	<u>Limit</u>
General Liability Insurance (occurrence form)	\$2,000,000.00 combined single limit per occurrence for bodily injury and property damage.
Automobile Insurance covering all owned, non- owned and hired automobiles.	Bodily injury liability limits of <u>\$1,000,000.00</u> each person and <u>\$500,000.00</u> per accident and property damage liability limits of <u>\$500,000.00</u> per accident.
Workers Compensation as required by laws of the State of Hawaii.	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the CONTRACTOR and (in case any sub-CONTRACTOR fails to provide adequate similar protection for all his employees) to all employees of sub-CONTRACTORS.

- a. The State of Hawaii and the Hawaii Public Housing Authority (HPHA) shall be named as additional insured parties for operations performed under this Contract. The CONTRACTOR agrees to provide the STATE before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of this Contract. Upon request by the STATE, the CONTRACTOR shall furnish a copy of the policy or policies.
- b. Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the STATE to exercise any or all of the remedies provided in this contract for default of the CONTRACTOR.
- c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.
- d. The insurer shall notify the STATE in writing of any cancellation or change in provisions thirty (30) calendar days prior to the effective date of such cancellation or change.
2. CONTRACTOR shall have a permanent office on the island of Oahu or the geographic area awarded from where he conducts business and where he will be accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable.



STATE OF HAWAII

SPECIAL CONDITIONS

Permanent office location and phone number shall be stated on the Bid.

3. The work to be performed under this Contract is subject to the requirement of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
4. The STATE shall monitor the performance of work on an ongoing basis through desk monitoring, site inspection and/or other appropriate methods.
5. Should the CONTRACTOR fail to comply with the requirements of the Contract, the STATE reserves the right to engage the services of another company to perform the services, to remedy the defect or failure and to deduct such costs from monies due to the CONTRACTOR or to assess the CONTRACTOR directly.
6. In the event the CONTRACTOR fails, refuses, or neglects to perform the services in accordance with the requirements of the Invitation for Bids number IFB PMB-2009-20 or the Contract, the STATE reserves the right to purchase in the open market, a corresponding quantity of services, and to deduct from CONTRACTOR this cost and from any monies due or that may thereafter become due the CONTRACTOR (the cost to the STATE of procuring such services). In case money due to the CONTRACTOR is insufficient for the purpose, the CONTRACTOR shall pay the difference upon demand by the STATE. The STATE may also utilize all other remedies provided under the Contract and by law and rules.
7. In the event there is a conflict between the general conditions from HUD 5370-C (05/2006) and general conditions AG-008 (4/15/2009), both of which are attached hereto, the more restrictive of the two shall apply.

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements.....	3
4. Nondiscrimination.....	3
5. Conflicts of Interest.....	3
6. Subcontracts and Assignments.....	3
7. Indemnification and Defense.....	4
8. Cost of Litigation.....	4
9. Liquidated Damages.....	4
10. STATE'S Right of Offset.....	4
11. Disputes.....	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses.....	8
17. Payment Procedures; Final Payment; Tax Clearance.....	9
18. Federal Funds.....	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment.....	11
22. Variation in Quantity for Definite Quantity Contracts.....	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material.....	12
25. Publicity.....	12
26. Ownership Rights and Copyright.....	12
27. Liens and Warranties.....	12
28. Audit of Books and Records of the CONTRACTOR.....	12
29. Cost or Pricing Data.....	13
30. Audit of Cost or Pricing Data.....	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law.....	13
35. Compliance with Laws.....	14
36. Conflict between General Conditions and Procurement Rules.....	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver.....	14
40. Pollution Control.....	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contractor as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2010)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (without maintenance) greater than \$100,000 - use Section I;
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) **Maintenance contracts** (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban Development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- (d) proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

- (a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

- (b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

Instructions to Offerors Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and
- (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors

Non-Construction Contract

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offers represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offers, the bidder/offers:

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offers shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offers shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offers represents and certifies as part of its bid/offer that it:

(a) ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offers certifies that—

(1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offers or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offers, directly or indirectly, to any other bidder/offers or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder/offers to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the bidder/offers's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offers's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offers's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

-
- (iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.
 - (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
 - (i) Award of the contract may result in an unfair competitive advantage;
 - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
 - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

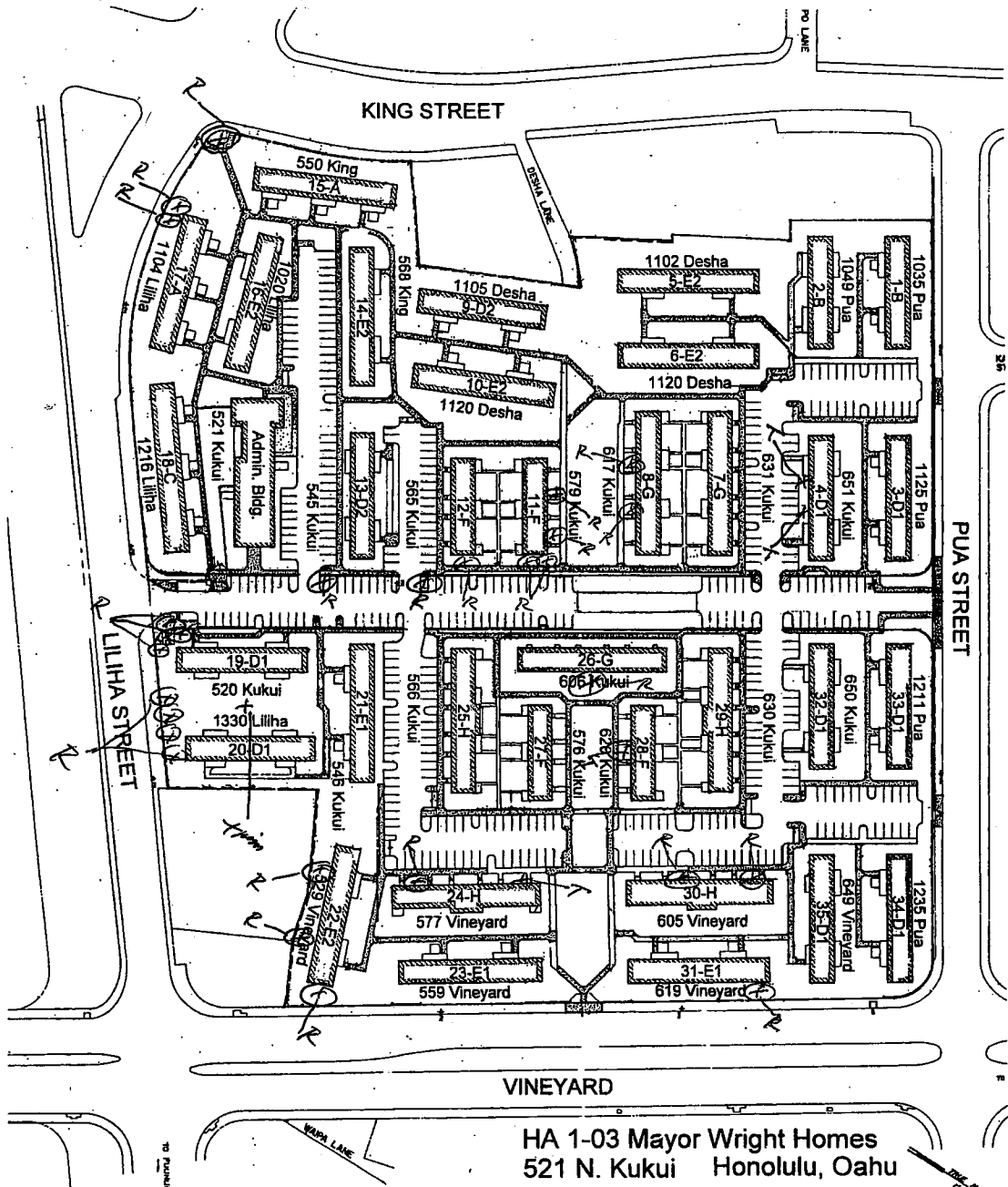
Typed or Printed Name:

Title:

State of Hawaii
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
SALARY SCHEDULE

Effective Date: 03/01/2009
Bargaining Unit: 01 Blue Collar, Non-Supervisor

BC01	ANN MON 8HR HRLY	A 32,772 2,731 126.08 15.76	BC09	ANN MON 8HR HRLY	A 44,544 3,712 171.36 21.42	WS01	ANN MON 8HR HRLY	A 33,960 2,830 130.64 16.33	WS09	ANN MON 8HR HRLY	A 47,268 3,939 181.84 22.73
BC02	ANN MON 8HR HRLY	33,228 2,769 127.84 15.98	BC10	ANN MON 8HR HRLY	46,236 3,853 177.84 22.23	WS02	ANN MON 8HR HRLY	35,544 2,962 136.72 17.09	WS10	ANN MON 8HR HRLY	48,960 4,080 188.32 23.54
BC03	ANN MON 8HR HRLY	34,164 2,847 131.44 16.43	BC11	ANN MON 8HR HRLY	47,928 3,994 184.32 23.04	WS03	ANN MON 8HR HRLY	36,576 3,048 140.64 17.58	WS11	ANN MON 8HR HRLY	50,856 4,238 195.60 24.45
BC04	ANN MON 8HR HRLY	35,544 2,962 136.72 17.09	BC12	ANN MON 8HR HRLY	49,764 4,147 191.44 23.93	WS04	ANN MON 8HR HRLY	38,052 3,171 146.32 18.29	WS12	ANN MON 8HR HRLY	52,704 4,392 202.72 25.34
BC05	ANN MON 8HR HRLY	36,960 3,080 142.16 17.77	BC13	ANN MON 8HR HRLY	51,576 4,298 198.40 24.80	WS05	ANN MON 8HR HRLY	39,576 3,298 152.24 19.03	WS13	ANN MON 8HR HRLY	54,672 4,556 210.24 26.28
BC06	ANN MON 8HR HRLY	38,436 3,203 147.84 18.48	BC14	ANN MON 8HR HRLY	53,532 4,461 205.92 25.74	WS06	ANN MON 8HR HRLY	41,160 3,430 158.32 19.79	WS14	ANN MON 8HR HRLY	56,748 4,729 218.24 27.28
BC07	ANN MON 8HR HRLY	39,972 3,331 153.76 19.22	BC15	ANN MON 8HR HRLY	55,560 4,630 213.68 26.71	WS07	ANN MON 8HR HRLY	42,816 3,568 164.64 20.58	WS15	ANN MON 8HR HRLY	58,884 4,907 226.48 28.31
BC08	ANN MON 8HR HRLY	41,592 3,466 160.00 20.00				WS08	ANN MON 8HR HRLY	44,508 3,709 171.20 21.40			

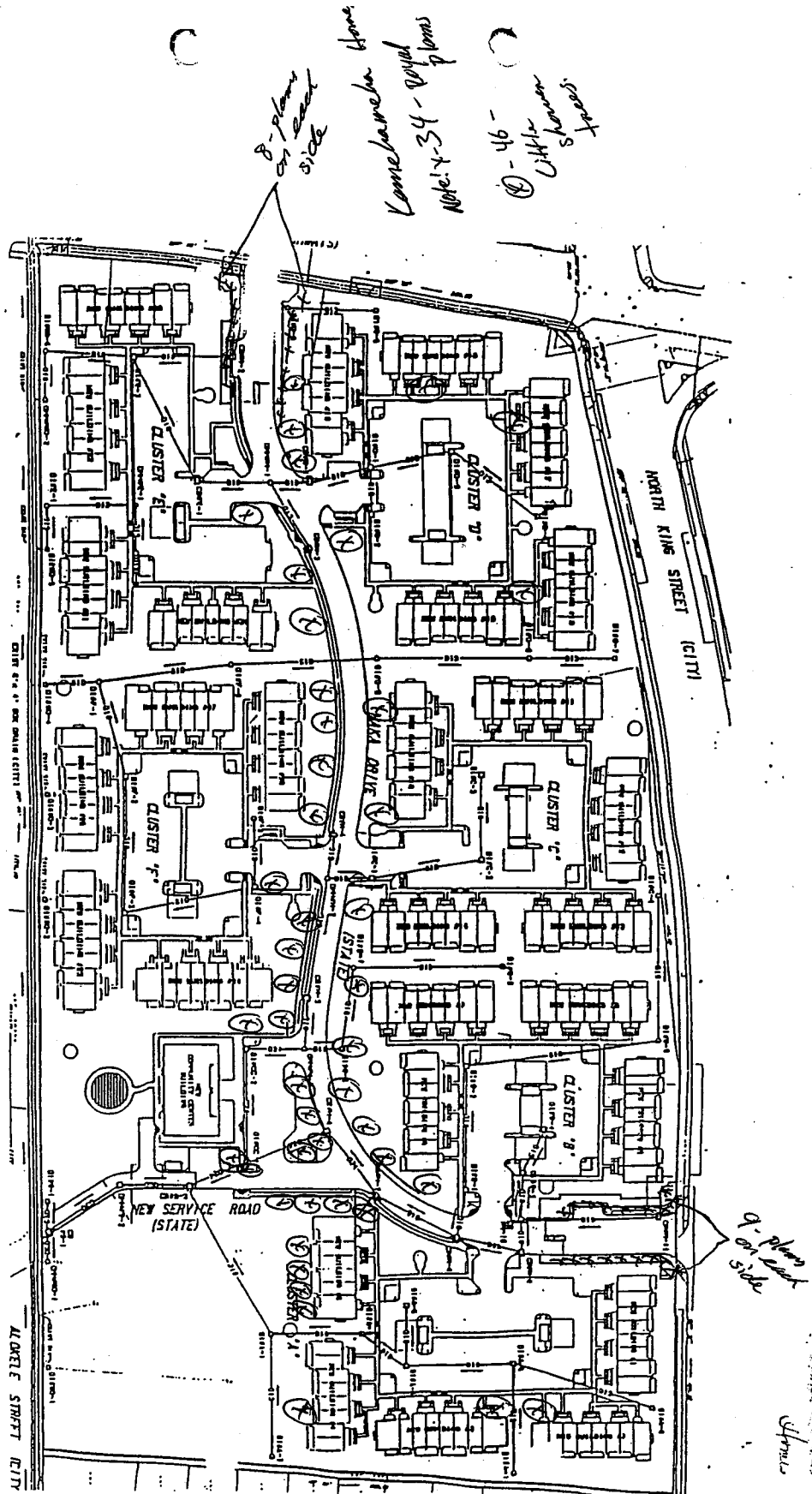


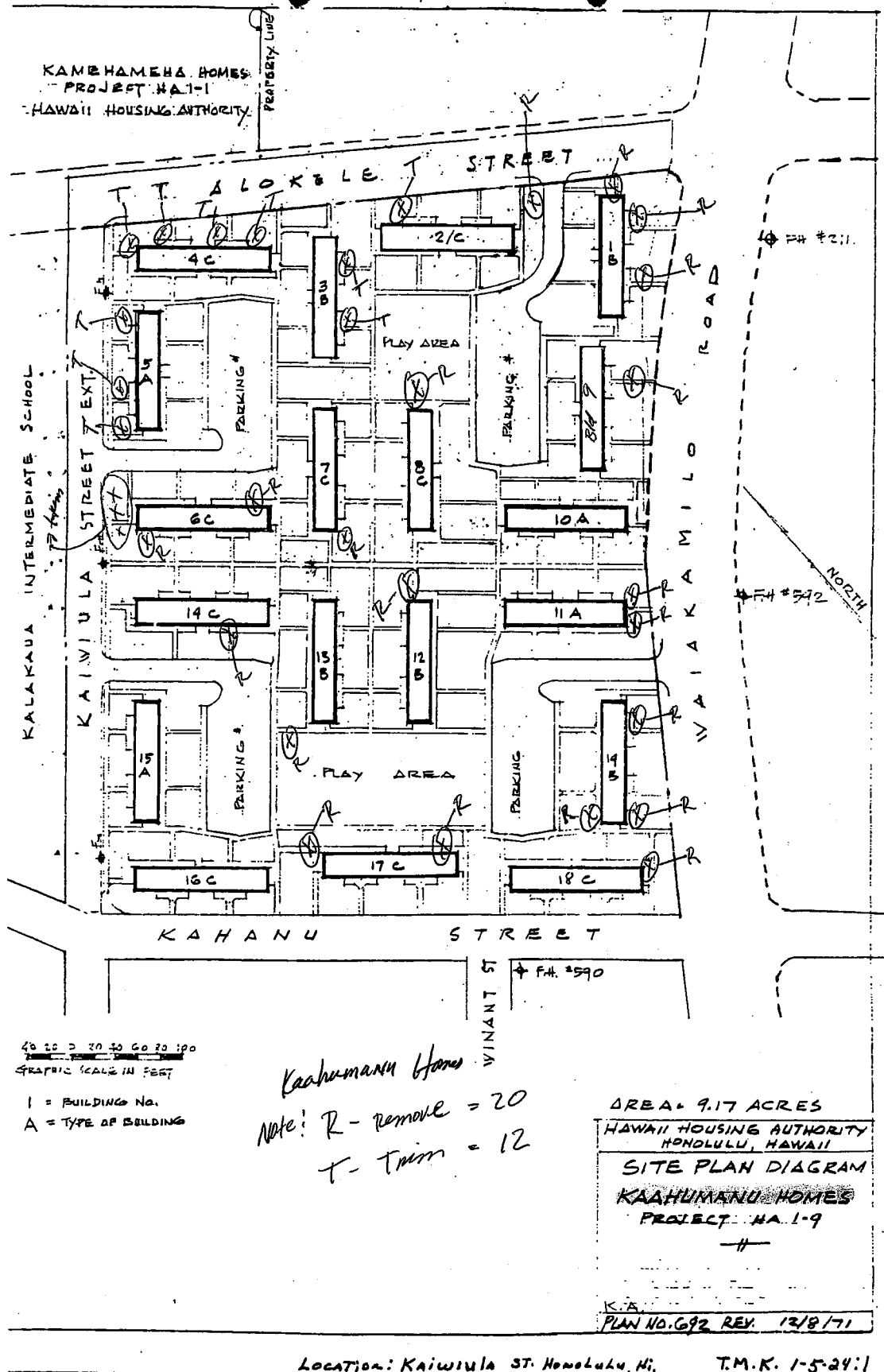
HA 1-03 Mayor Wright Homes
521 N. Kukui Honolulu, Oahu

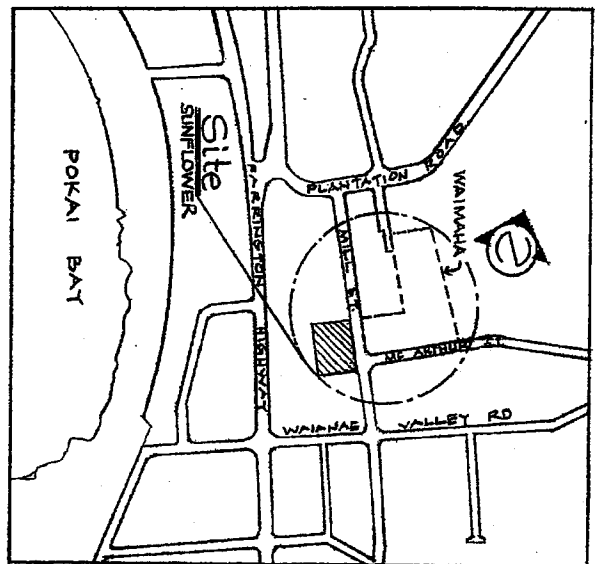
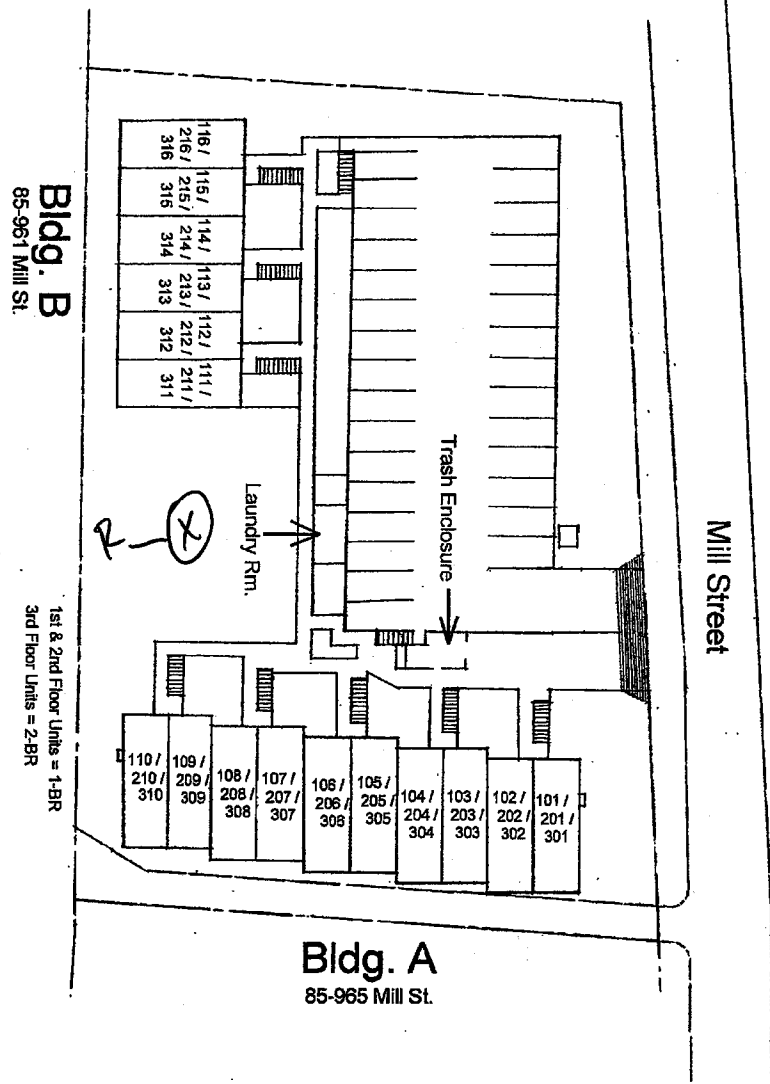
Note: (K) - R = 27
w/ 10 units here
X - T = 5

Slabs
Buildings

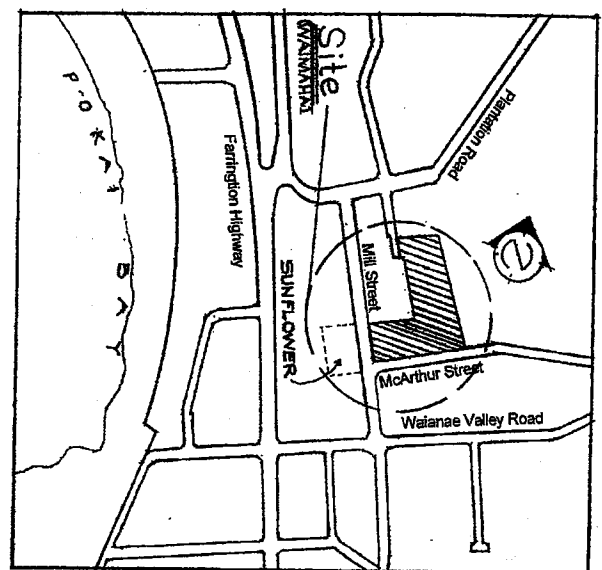
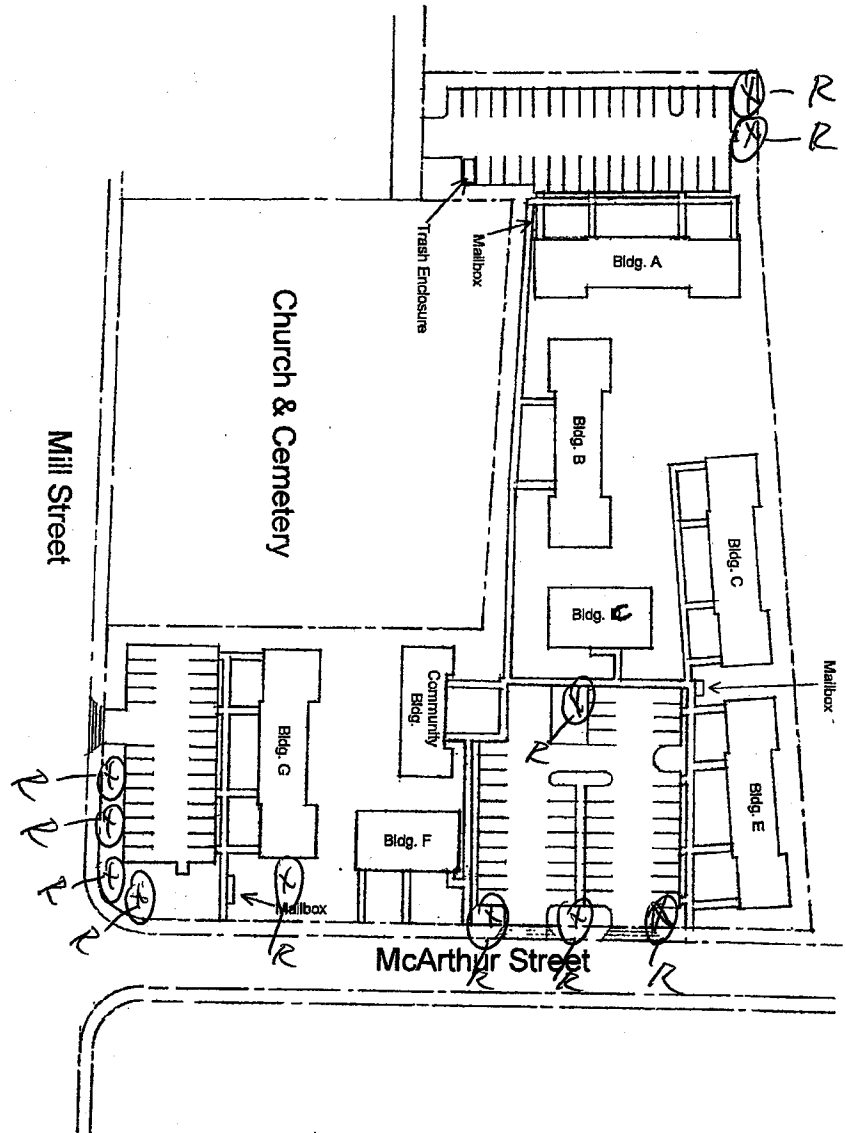
EXHIBIT







Sunflower, HA 1-57b
85-186 McArthur Street, Waiānae, Oahu
TMK: 8-5-10:29,63



Addresses

Bldgs. A & B: 85-934 Mill St.
Bldgs. C, D, E: 85-186 McArthur St.
Bldgs. F & G: 85-164 McArthur St.

Waimaha, HA 1-57
85-186 McArthur Street, Waianae, Oahu
TMK: 8-5-10:29,63

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